vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1131 OF 2002

Ajaysah Ramjisah
at present in
Nashik Road Central Prison
Nashik ... Appellant

V/s.

The State of Maharashtra
(at the instance of Gangapur
Police Station, Dist.:Nashik) ... Respondent

Mrs.Ruchira Dhuru for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 18, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused appellant has challenged his conviction under section 302 of the Indian Penal Code by the I Additional Sessions Judge, Nasik. The allegation against the accused is that he administered 300 ml. of acid to his 7 month old son, as a result of which the baby died. The incident allegedly took place on 11.8.2001. The accused was arrested a few days later, in Bihar.

2. With the assistance of the learned Advocate for the accused and the learned Assistant Public Prosecutor, we have perused the evidence recorded before the trial Court. We have reappreciated the same and are unable to concur with the findings recorded by the Sessions Court.

3. PW2 who has been examined on behalf of the prosecution is the grandfather of the victim. According to this witness, his daughter Pushpa was married to the accused and was residing in Bihar with him. About six months after the marriage he had met Pushpa when she informed him that she was pregnant and was not in good health. He, therefore, brought her back to Nasik. This witness has stated that the accused used to beat his daughter. He then states Pushpa stayed with him in Nasik for six months and gave birth to a baby boy, Sonu, the victim in this case. After her delivery, this witness brought Pushpa back to his house. The accused visited them twice after the birth of his child. He stayed with them for eight days and went away. According to the witness, the accused returned about 15 days prior to the incident which occurred on 11.8.2001. The witness then goes on to state that on the day of the incident the accused came to his house with a bottle of sulphuric acid, poured the acid in the victim's mouth and ran away from the house. His neighbour Pawar then accompanied the injured child alongwith the child's mother Pushpa and admitted the child to the hospital after collecting money from this witness. Significantly, despite such a calamity, this witness did not bother to accompany the child to hospital. He then contradicts himself and states that it was not his daughter who accompanied the neighbour but his wife. He

then states that his wife informed him that the accused had poured acid into the child's mouth and had run away. The child succumbed to his injuries and he then lodged an FIR which is at Exhibit 12. This witness has stated that he brought his daughter back to Nasik when he learnt of the ill treatment meted out to her with the consent of her husband and her in-laws. He has agreed with the suggestion that his daughter was not happy with the accused. In the FIR, the witness has stated that the acid was administered forcibly through the milk bottle. The evidence of this witness is riddled with the contradictions, omissions and discrepancies.

4. The grandmother of the victim has been examined as PW3. This witness states that the accused met her while she was selling vegetables on a handcart. Pushpa, her daughter had gone to fetch water at that time. The child was with her while she was selling vegetables. The accused approached them and she decided to make tea for him. She left the child with the accused, went to the grocery shop to buy provisions and then went home to prepare tea. Her residence was about 10 ft. to 15 ft. away from the handcart. While she was preparing the tea, she heard the child crying. She found that the child was kept on the cot and the accused was forcing some liquid in his mouth from a bottle with a nipple. When she questioned the accused, he again forced the nipple of the bottle into the child's mouth and ran

away. She found the clothes of the child burnt and there were injuries on the child's face. She called out to her neighbour and related to him that the accused had poured something into the child's mouth. With the help of this neighbour, Pawar, she admitted the child into the hospital. This witness states that her husband brought the medicines required to the hospital. In the crossexamination, she has stated that she showed the milk bottle which was used by the accused to administer the acid to the police. She has also stated that the the bottle was made of fibre. She has then admitted that she and her husband wanted to get her daughter remarried since the accused was not ill treating her. Again this witness does not corroborate the testimony of PW2. She has stated that the accused tried to force-feed the baby with the milk bottle whereas PW1 has stated in his deposition before the Court that the accused poured the liquid into the child's mouth.

5. The Investigating Officer has been examined as PW4. This witness states that he had visited the spot and a panchanama of the scene of offence was drawn up. The panchanama only shows seizure of the clothes of the victim. The bottle which was allegedly used to administer the acid was not seized. Although PW7 has stated that she pointed out the bottle to the Investigating Officer, when the Panchanama was drawn up, PW4 has denied this. When a specific question was asked

to him, PW4 has stated that no bottle whether containing milk or otherwise was seized from the scene of offence. The clothes of the victim were handed over to him in the hospital by the Doctor attending the victim. The viscera was sent for chemical analysis as also the clothes of the victim.

6. The case of the prosecution is based entirely on circumstantial evidence. According to the prosecution, the fact that the accused was ill treating his wife has been established. The fact that he came to the house of PW2 has also been established. The fact that PW3 saw him administering some liquid to the child through the milk bottle has also been proved and the homicidal death of the victim has been proved by PW1, the medical officer attending the victim. In our opinion, the theory of the prosecution is unsustainable. The chain of circumstantial evidence is not complete and there are several missing links in it. If what PW2 and PW3 state is correct, that the victim was administered the acid through the bottle either by pouring the contents directly into the mouth of the baby or with the help of a nipple, then the bottle would have been found at the scene of offence. The bottle allegedly used by the accused has not been seized. In fact, the Investigating Officer is categoric when he states that PW3 did not give him or show him the bottle which was used to administer the acid. The presence of the accused at the

scene of offence is also not established. It is unbelievable that the accused, who did not bother to visit Nasik when his wife delivered the child to meet her and their child, would attempt to meet his wife and son there, 7 months after his birth. The prosecution has not proved beyond reasonable doubt that the accused was present at the scene of offence. The evidence of PW2 and PW3, the grand parents, is not credible and cannot be believed.

. There is no explanation as to why the mother of the child has not been examined nor is there any reason why Pawar, the neighbour has not been examined. Strangely, the child succumbed to the injuries in the hospital and an ADR was recorded at about 11.15 that night. The ADR states that the child fell on a lighted stove and sustained 25% burn injuries. He was brought to the hospital by his grandmother at 8 O'clock that evening. It is unnatural that the mother of the child who had sustained such grave injuries would not accompany the child to the hospital. It is again, unbelievable that the grandfather, PW2, would only give money to purchase the medicine and not accompany the child who has suffered such serious injuries to the hospital. The postmortem report shows that there were multiple burns on both the forearms and feet of the child. His scalp was burnt besides other burn injuries and various parts of the body. If as the prosecution

states the burn injuries were on account of a corrosive substance being administered to the child, and the child was forcefed, according to PW3, there would be signs of sulphuric acid on the cot on which the child was laid while being forcefed. There are no such marks on the cot nor anywhere around the child. The chemical analysis shows that the clothes of the child were burnt on account of sulphuric acid. However, there is no evidence at all that it was the accused who had administered this corrosive substance to the child. The ADR was obviously recorded because of the history given by the grandmother when the child was admitted to the hospital. The FIR was recorded a day later and it appears that PW2 and PW3 have roped in the accused, motivatedly. If indeed the accused had administered the acid as claimed by the prosecution, the grandmother would obviously have stated so when the history was recorded in the hospital.

7. In our opinion, this is an unfortunate case where a child has died a homicidal death. The investigation has been conducted in a slipshod manner. The basic precaution that the investigating agency should have taken was to seize the bottle. That bottle would have borne the finger prints of the accused and would also contain traces of the sulphuric acid in it. The investigating authorities did not bother to decipher any finger prints in the house to demonstrate that the

accused had been present at the scene of offence. With such gaping lacunae in the investigation, we are unable to uphold the judgment of the Sessions Court.

8. In the result, Appeal is allowed. The judgement of the Sessions Court is set aside. The accused shall be set free if not otherwise required in law.